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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,301	05/08/2001	Robert W. Killick	038441/0104	2790

22428 7590 06/16/2005

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/831,301

Applicant(s)

KILLICK ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 34-38 and 41-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 34,36 and 41-44 is/are rejected.
- 7) ☐ Claim(s) 35,37,38,45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### DETAILED ACTION

Rejection of claim 33 under 35 USC 103(a) over Hirabayashi in view of Manabe will not be maintained. Claim 33 has been canceled.

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34,36,41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al (EP 598 515; 08/25/94) and Hirabayashi et al (EP 598 404; 11/18/93). Hayashi teaches a herbicidal composition comprising 1-65 parts (%) ethoxylated fatty amine and 1-95 parts (%) mineral oil. See abstract, page 3 lines 40-43, page 4 lines 3-6, page 6 lines 19-33. Hayashi does not teach the composition comprising 5 to 25 % ammonium salt of inorganic anions. However, Hirabayashi teaches a herbicidal composition comprising 5% ammonium chloride. See abstract, page 10 Examples 9-10. It would have been obvious to combine the composition taught by Hayashi and Hirabayashi to arrive at a single composition comprising ethoxylated fatty amine, mineral oil, plus ammonium chloride. One would have been motivated to do this since both references individually teach herbicidal compositions. With respect to the amounts of ingredients, the % ranges of ingredients taught by the prior art overlap the

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% ranges disclosed by the instant claims. When ranges overlap, the prior art invention makes obvious the instant invention unless data are provided to establish the criticality of the instant ranges.

Claims 34,36,41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirabayashi et al (US 5,436,225; 7/25/95) in view of Manabe et al (US 5,346,879; 9/13/94). Hirabayashi teaches a method of applying a plant growth regulator composition comprising ammonium chloride (lipophobic plant nutrient) and mineral oil (lipophilic solvent) to a plant in order to control growth of the plant. See abstract, claim 1. Hirabayashi does not teach the method comprising a cationic emulsifier. However, Manabe teaches a method of applying a plant growth regulator composition comprising alkyltrimethylammonium chloride (cationic emulsifier). See column 16 lines 36-50. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Hirabayashi to include the alkyltrimethylammonium chloride taught by Manabe. One would have been motivated to do this since both inventions individually teach methods of regulating plant growth. With respect to the amounts of ingredients, it would have been obvious to one having ordinary skill in the art to determine the optimum amount of ingredients. One would have been motivated to do this in order to develop a composition that would have been most effective in controlling plant growth.

#### ***Claim Objection***

Claims 35,37,38,45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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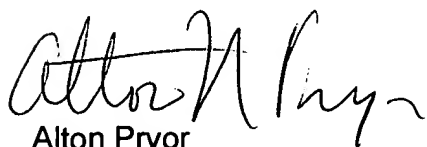
limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant composition comprising 1 to 30% of the instant other components.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton N. Pryor', with a stylized flourish at the end.

Alton Pryor  
Primary Examiner  
AU 1616